

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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ELAINE PARKER-REED,  
Plaintiff,

NO. CIV. S 03-2616 MCE PAN

v.

MEMORANDUM AND ORDER

SPRINT CORPORATION, GEORGE  
WHITE, and DOES 1-49,  
inclusive,

Defendant(s).

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In bringing the present action, Plaintiff Elaine Parker-Reed ("Plaintiff") alleges that Defendant Sprint Corporation ("Defendant"), and George White as its agent, subjected Plaintiff to discrimination, sexual harassment, retaliation and a hostile work environment in violation of her rights under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et. seq., the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C § 621 et. seq., the American's with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et. seq., and the California Fair

1 Employment and Housing Act ("FEHA"), California Government Code  
2 §§ 12900-12996. Defendant now moves to dismiss certain of  
3 Plaintiff's claims or, in the alternative, for summary  
4 adjudication as to those claims.<sup>1</sup> For the reasons set forth  
5 below, summary adjudication of Plaintiff's Federal Claims and  
6 State Claim in favor of Defendant is granted.<sup>2</sup>

7  
8 **BACKGROUND**  
9

10 Plaintiff was hired by Defendant in May of 1989. In late  
11 2001, Plaintiff went on medical leave pursuant to instructions  
12 from her physician. By February 15, 2002, Plaintiff's employment  
13 was terminated by Defendant. On August 20, 2002, Plaintiff filed  
14 a complaint with the California Department of Fair Employment and  
15 Housing ("DFEH") alleging claims of discrimination and otherwise  
16 wrongful conduct on the part of Defendant. On September 12,  
17 2002, the DFEH issued Plaintiff a "right-to-sue" letter ("DFEH  
18 letter"). The DFEH letter explained that Plaintiff had one year  
19 from the date it was issued to seek legal redress on state law

20  
21 <sup>1</sup> The federal claims that are the subject of this motion  
22 are Discrimination Based on Sex (first cause of action);  
23 Discrimination Based on Race and Ancestry (second cause of  
24 action); Discrimination Based on Age (third cause of action);  
25 Discrimination Based on Medical Condition and Mental Disability  
26 (fourth cause of action); Harassment Based on Sex (fifth cause of  
27 action); Retaliation (sixth cause of action); Failure to Stop  
28 Discrimination, Harassment, Retaliation, and Hostile Work  
Environment (eighth cause of action); (collectively, "Federal  
Claims"). The state claim that is the subject of this motion is  
Breach of the Employment Agreement and of the Covenant of Good  
Faith and Fair Dealing (tenth cause of action) ("State Claim").

<sup>2</sup>Because oral argument will not be of material assistance,  
the Court orders this matter submitted on the briefs. E.D. Cal.  
Local Rule 78-230(h).

1 causes of action. The DFEH letter also provided that, should  
2 Plaintiff wish to pursue remedies under federal law, she was  
3 required to file a complaint with the Equal Employment  
4 Opportunity Commission ("EEOC") within 30 days of receipt of the  
5 DFEH letter. Due to an error in her address, Plaintiff did not  
6 receive her DFEH letter until some forty-five (45) days after the  
7 issuance thereof. Plaintiff did not then, nor has she ever,  
8 filed a claim with the EEOC.

9  
10 **STANDARD**

11  
12 The Federal Rules of Civil Procedure provide for summary  
13 judgment when "the pleadings, depositions, answers to  
14 interrogatories, and admissions on file, together with  
15 affidavits, if any, show that there is no genuine issue as to any  
16 material fact and that the moving party is entitled to a judgment  
17 as a matter of law." Fed. R. Civ. P. 56(c). One of the  
18 principal purposes of Rule 56 is to dispose of factually  
19 unsupported claims or defenses. Celotex Corp. v. Catrett, 477  
20 U.S. 317, 325 (1986).

21 Rule 56 also allows a court to grant summary adjudication on  
22 part of a claim or defense. See Fed. R. Civ. P. 56(a) ("A party  
23 seeking to recover upon a claim ... may ... move ... for a  
24 summary judgment in the party's favor upon all or any part  
25 thereof."); see also Allstate Ins. Co. v. Madan, 889 F. Supp.  
26 374, 378-79 (C.D. Cal. 1995); France Stone Co., Inc. v. Charter  
27 Township of Monroe, 790 F. Supp. 707, 710 (E.D. Mich. 1992).

28 The standard that applies to a motion for summary

1 adjudication is the same as that which applies to a motion for  
2 summary judgment. See Fed. R. Civ. P. 56(a), 56(c); Mora v.  
3 ChemTronics, 16 F. Supp. 2d 1192, 1200 (S.D. Cal. 1998).

4 Under summary judgment practice, the moving party  
5 always bears the initial responsibility of informing  
6 the district court of the basis for its motion, and  
7 identifying those portions of 'the pleadings,  
8 depositions, answers to interrogatories, and admissions  
9 on file together with the affidavits, if any,' which it  
10 believes demonstrate the absence of a genuine issue of  
11 material fact.

12 Celotex Corp. v. Catrett, 477 U.S. at 323(quoted Rule 56(c)).

13 If the moving party meets its initial responsibility, the  
14 burden then shifts to the opposing party to establish that a  
15 genuine issue as to any material fact actually does exist.

16 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,  
17 585-87 (1986); First Nat'l Bank v. Cities Serv. Co., 391 U.S.  
18 253, 288-89 (1968).

19 In attempting to establish the existence of this factual  
20 dispute, the opposing party must tender evidence of specific  
21 facts in the form of affidavits, and/or admissible discovery  
22 material, in support of its contention that the dispute exists.  
23 Fed. R. Civ. P. 56(e). The opposing party must demonstrate that  
24 the fact in contention is material, i.e., a fact that might  
25 affect the outcome of the suit under the governing law, and that  
26 the dispute is genuine, i.e., the evidence is such that a  
27 reasonable jury could return a verdict for the nonmoving party.

28 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 251-52  
(1986); Owens v. Local No. 169, Assoc. of Western Pulp and Paper  
Workers, 971 F.2d 347, 355 (9th Cir. 1987). Stated another way,  
"before the evidence is left to the jury, there is a preliminary

1 question for the judge, not whether there is literally no  
2 evidence, but whether there is any upon which a jury could  
3 properly proceed to find a verdict for the party producing it,  
4 upon whom the onus of proof is imposed." Anderson, 477 U.S. at  
5 251 (quoting Improvement Co. v. Munson, 14 Wall. 442, 448, 20  
6 L.Ed. 867 (1872)). As the Supreme Court explained, "[w]hen the  
7 moving party has carried its burden under Rule 56(c), its  
8 opponent must do more than simply show that there is some  
9 metaphysical doubt as to the material facts .... Where the record  
10 taken as a whole could not lead a rational trier of fact to find  
11 for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita, 475 U.S. at 586-87.

13 In resolving a summary judgment motion, the evidence of the  
14 opposing party is to be believed, and all reasonable inferences  
15 that may be drawn from the facts placed before the court must be  
16 drawn in favor of the opposing party. Anderson, 477 U.S. at 255.  
17 Nevertheless, inferences are not drawn out of the air, and it is  
18 the opposing party's obligation to produce a factual predicate  
19 from which the inference may be drawn. Richards v. Nielsen  
20 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985),  
21 aff'd, 810 F.2d 898 (9th Cir. 1987).

## 23 ANALYSIS

### 25 1. Exhaustion of Administrative Remedies

26 Defendant first contends that Plaintiff's Federal Claims  
27 should be dismissed because she failed to exhaust her  
28 administrative remedies. In reply, Plaintiff urges that her DFEH

1 complaint and subsequent DFEH right-to-sue letter satisfy both  
2 her state and federal administrative exhaustion requirements.

3 Plaintiff has brought causes of action under Title VII, the  
4 ADA and the ADEA. In order to assert a cause of action under any  
5 of these federal statutes, an individual must file a charge of  
6 discrimination with the EEOC within 180 days of the alleged  
7 unlawful employment practice. 42 U.S.C. § 2000e-5(e)(1) (Title  
8 VII filing requirement); 42 U.S.C. § 12117(a) (ADA filing  
9 requirement); 29 U.S.C. § 262(d) (ADEA filing requirement).

10 Failure to meet these filing requirements acts as a limitation  
11 period and bars subsequent actions in federal court.

12 Plaintiff's axial argument is that, pursuant to 29 C.F.R.  
13 1626.10(c), the DFEH and the EEOC are engaged in a workshare  
14 agreement meaning that a filing with one agency is deemed  
15 received or filed with the other. In fact, section 1626.10(c)  
16 provides as follows:

17 When a worksharing agreement with a State agency is in  
18 effect, the State agency will act on certain charges  
19 and the Commission will promptly process charges which  
20 the State agency does not pursue. Charges received by  
one agency under the agreement shall be deemed received  
by the other agency *for purposes of § 1626.7.*

21 29 C.F.R. 1626.10(c) (emphasis added).

22 Plaintiff is correct that the DFEH is an approved state  
23 agency and has entered into a workshare agreement with the EEOC.  
24 Plaintiff's contention, however, that the foregoing provision  
25 acts to transform her DFEH filing into an EEOC filing such that  
26 it satisfies her EEOC administrative exhaustion requirement is  
27 unavailing. While this provision does provide that a claim  
28 received by a state agency is "deemed received" by the EEOC, it

1 is only deemed received "for purposes of Section 1626.7." 29  
2 C.F.R. 1626.10(c). Section 1626.7 refers solely to the  
3 timeliness, as opposed to the existence, of an EEOC charge.  
4 Specifically, that section provides that in the event an  
5 aggrieved party initially files a charge with a state agency,  
6 that party has 300 days from the date of the alleged violation to  
7 file a charge with the EEOC as opposed to the statutorily  
8 proscribed 180 days. 42 U.S.C. § 2000e-5(e)(1); 29 C.F.R.  
9 1626.7. This provision extended Plaintiff's time to file her  
10 EEOC charge from 180 days to 300 days. Nonetheless, Plaintiff has  
11 never filed a claim with the EEOC and this provision does nothing  
12 to cure that procedural defect.

## 13 14 **2. Equitable Estoppel**

15  
16 Next, Plaintiff argues that her DFEH claim should act to  
17 equitably estop Defendant from claiming that her Federal Claims  
18 are time barred. Again, Defendant correctly rebuts that  
19 equitable estoppel "arises as a result of some conduct by the  
20 defendant, relied on by the plaintiff, which induces the belated  
21 filing of the action." Prudential-Lmi Com. Ins. v. Superior  
22 Court, 51 Cal. 3d 674, 690 (Cal. 1990) (internal citations and  
23 quotations omitted). The California Supreme Court has also  
24 explained that "[t]he estoppel cases appear to fall roughly into  
25 three classes: (1) Where the plaintiff is aware of his cause of  
26 action and the identity of the wrongdoer, but the latter by  
27 affirmative acts induces the plaintiff to refrain from suit. (2)  
28 Where the plaintiff is unaware of his cause of action and his

1 ignorance is due to false representations by the defendant. (3)  
2 Where the plaintiff is unaware of the identity of the wrongdoer  
3 and this is due to fraudulent concealment by the defendant." Id.

4 It is undisputed that Defendant did not engage in any  
5 conduct or affirmative act that would have induced Plaintiff not  
6 to file her claim timely. Similarly, Plaintiff was clearly aware  
7 of her cause of action no later than her August 20, 2002, DFEH  
8 filing. Because Plaintiff has failed to establish any element of  
9 equitable estoppel, she is not entitled to rely thereon to save  
10 her Federal Claims.

### 11 12 **3. Equitable Tolling**

13  
14 Similarly, Plaintiff argues that this Court should apply the  
15 doctrine of equitable tolling to toll the statutory bar on her  
16 Federal Claims. Equitable tolling focuses on a plaintiff's  
17 excusable ignorance and lack of prejudice to the defendant. The  
18 doctrine of equitable tolling "has been consistently applied to  
19 excuse a claimant's failure to comply with the time limitations  
20 where she had neither actual nor constructive notice of the  
21 filing period." Leong v. Potter, 347 F.3d 1117, 1123 (9th Cir.,  
22 2003) (internal citations and quotations omitted). If a  
23 reasonable plaintiff would not have known of the existence of a  
24 possible claim within the limitations period, then equitable  
25 tolling will serve to extend the statute of limitations until the  
26 plaintiff can gather what information she needs. Id.

27 There is no question that Plaintiff was aware of the  
28 circumstances that gave rise to her Federal Claims at the time

1 she filed her complaint with the DFEH on August 20, 2002. At the  
2 latest, she was made aware of the EEOC filing requirement when  
3 she received her DFEH letter in late October 2002. In fact, the  
4 DFEH letter included the following statement:

5 "If a federal notice of Right-To-Sue is wanted, the  
6 U.S. Equal Employment Opportunity Commission (EEOC)  
7 must be visited to file a complaint within 30 days of  
8 receipt of this DFEH notice of Case Closure or within  
9 300 days of the alleged discriminatory act, whichever  
10 is earlier."

11 Am. Compl., ¶ 7.

12 Plaintiff had actual knowledge of the time limit for filing  
13 her EEOC complaint by late October 2002. Nonetheless, she did  
14 not file her EEOC claim within the mandatory time period or at  
15 any time thereafter. Consequently, she is not entitled to have  
16 the statutory time for filing a charge with the EEOC equitably  
17 tolled and, thus, her Federal Claims are barred.

18 **4. Breach of Employment Agreement and of the Covenant of Good**  
19 **Faith and Fair Dealing**

20 Defendant has moved for summary adjudication as to  
21 Plaintiff's tenth cause of action for breach of the employment  
22 agreement and of the covenant of good faith and fair dealing.

23 Defendant claims that Plaintiff is an at-will employee and  
24 can be terminated at any time with or without cause. As evidence  
25 of the at-will nature of the relationship, Defendant has produced  
26 a copy of Plaintiff's signed acknowledgment which provides that  
27 either party may, with or without notice, terminate the  
28 employment relationship. Jones Decl., ¶2, Exh. A. In addition,  
Defendant relies on the presumption of an at-will relationship

1 created by California Labor Code section 2922 which provides that  
2 "... employment, having no specified term, may be terminated at  
3 the will of either party on notice to the other."

4 Plaintiff's complaint alleges that during the entire course  
5 of her employment with Defendant, supervisors rated her  
6 performance as over and above normal expectations and told her  
7 that she was an asset to the company. Plaintiff asserts that, as  
8 a result of the above representations, she came to rely on the  
9 promise of job security. Plaintiff also alleges that there  
10 existed an implied agreement that Plaintiff would not be  
11 terminated without cause.

12 Defendant correctly notes that under California law, an  
13 express at-will provision in a written contract cannot be  
14 overcome by allegations of an implied understanding to the  
15 contrary. The California Supreme Court recently explained that  
16 "most cases applying California law . . . have held that an  
17 at-will provision in an express written agreement, signed by the  
18 employee, cannot be overcome by proof of an implied contrary  
19 understanding." Guz v. Bechtel Nat'l, Inc., 24 Cal. 4th 317, 368  
20 n. 10, 8 P.3d 1089 (Cal. 2000). Plaintiff's assertion that  
21 statements by her supervisors intimated that she could be fired  
22 only for cause cannot create an implied contract in the face of  
23 the written, signed at-will employment contract. See *id.*; see  
24 also Starzynski v. Capital Pub. Radio, 88 Cal. App. 4th 33, 105  
25 Cal. Rptr. 2d 525 (Cal. Ct. App. 2001).

26 Plaintiff further alleged in her complaint that even if her  
27 employment is considered at-will, the covenant of good faith and  
28 fair dealing, implied by law in every contract, destroyed her

1 right to receive the benefits of her employment agreement and  
2 thwarted her reasonable expectation of continued employment,  
3 salary, promotions, pay raises, bonuses, health benefits, and  
4 retirement benefits. While an implied covenant requires mutual  
5 fairness in applying a contract's actual terms, it cannot  
6 substantively alter those terms. See Guz, 24 Cal. 4th at 326-  
7 327. If an employment is at-will, thereby allowing either party  
8 to terminate the relationship for any reason, the implied  
9 covenant cannot decree otherwise. Id.

10 Even viewing all the facts in the light most favorable to  
11 Plaintiff as we must when considering a motion for summary  
12 adjudication, Plaintiff has failed to present any evidence that  
13 she was other than an at-will employee subject to termination for  
14 any lawful reason with or without notice. Given Plaintiff's  
15 failure to present any evidence whatsoever that Defendant  
16 violated the employment agreement or the implied covenant of good  
17 faith and fair dealing, summary adjudication of Plaintiff's State  
18 Claim is appropriate.

## 19 20 **5. Request to Seal Court Records**

21  
22 On September 30, 2005, the Court received a request from  
23 Plaintiff to seal the record in this case. Specifically,  
24 Plaintiff requests that the record be sealed as it contains  
25 factual, family, agency and otherwise sensitive information. The  
26 Court finds that Plaintiff has failed to provide good cause to  
27 seal the record. Consequently, Plaintiff's request is denied.  
28

**CONCLUSION**

For the reasons more fully explained above, Defendant's motion for summary adjudication as to Plaintiffs Federal Claims and State Claim is GRANTED. In light of the dismissal of all of Plaintiff's Federal Claims, the Court remands this case to the state court for all remaining state law claims.

IT IS SO ORDERED.

DATED: October 14, 2005

A handwritten signature in blue ink, appearing to read "Morrison C. England, Jr.", is written over a horizontal line.

MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE